

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. : DATE FILED:

BARRY M. BUDILOV : VIOLATIONS:
RAYMOND J. GREEN :

18 U.S.C. § 1344 (Bank fraud - 1 count);
18 U.S.C. § 1014 (False statements to federally insured bank - 6 counts);
15 U.S.C. §§ 78j(b), 78ff(a);
17 C.F.R. § 240.10b-5 (Securities fraud - 1 count);
15 U.S.C. §§ 78m(a), 78ff(a);
17 C.F.R. §§ 240.12b-20, 240.13a (False filings with the Securities and Exchange Commission - 2 counts);
15 U.S.C. §§ 78m(b)(5), 78ff(a);
17 C.F.R. § 240.13b2-1 (Falsification of books and records - 1 count);
18 U.S.C. § 2 (Aiding and abetting);
Notice of forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. First Union National Bank ("First Union") was a financial institution with branches in the Eastern District of Pennsylvania and elsewhere whose deposits were insured by the Federal Deposit Insurance Corporation.
2. Defendant BARRY M. BUDILOV and another individual known

to the grand jury incorporated Ambassador Eyewear Group, Inc. (“Ambassador”), under the laws of Delaware.

3. Ambassador marketed and distributed prescription eyeglass frames and sunglasses to specialty and department stores, including Wal-Mart Stores, Inc., which was one of its largest customers.

4. Ambassador was initially located in Philadelphia at 1010 Arch Street and then moved to larger offices in Bensalem at 3600 Marshall Lane.

5. Defendant BARRY M. BUDILOV was the President, Chief Executive Officer and a director of Ambassador. He was also a Certified Public Accountant licensed to practice in Pennsylvania.

6. Defendant RAYMOND. J. GREEN was the treasurer and principal financial accounting officer of Ambassador.

7. Defendant BARRY M. BUDILOV, on behalf of Ambassador, secured an asset-based line of credit from First Union. Under the terms of this collateralized credit line, Ambassador was permitted to borrow up to a percentage of the total value of Ambassador’s accounts receivable that were less than 90 days old, and its current inventory value.

8. Under the terms of its loan agreement:

(a) Ambassador was required to submit on a daily basis a “borrower’s certificate” stating the total value of Ambassador’s eligible accounts receivable and its current inventory values in order for First Union to determine the amount Ambassador could borrow on any given day;

(b) Ambassador was required, among other things, to maintain accurate financial

books and records, and to submit to periodic audits by First Union's audit staff; and

(c) Ambassador was required to prepare its quarterly and annual financial statements and reports in accordance with Generally Accepted Accounting Principles ("GAAP"). GAAP provides guidelines for the proper treatment of, among other things, accounts receivable, inventory and credits in the preparation of financial records.

THE SCHEME TO DEFRAUD FIRST UNION

9. From at least in or about January 1997 through in or about February 1999, in the Eastern District of Pennsylvania and elsewhere, defendants

BARRY M. BUDILOV
and
RAYMOND J. GREEN

knowingly executed and attempted to execute a scheme to defraud First Union, a federally insured financial institution, and to obtain monies and funds owned by and under the custody and control of First Union, by means of false and fraudulent pretenses, representations, and promises.

MANNER AND MEANS

10. It was a part of the scheme that defendants BARRY M. BUDILOV and RAYMOND J. GREEN, knowing that Ambassador's business operations were losing money, falsely inflated Ambassador's eligible accounts receivable and inventory values in order to increase Ambassador's reported assets and obtain an increased line of credit of up to \$20 million from First Union.

It was a further part of the scheme that:

11. Defendant BARRY M. BUDILOV caused and directed defendant RAYMOND J. GREEN to prepare and submit falsified borrower's certificates containing the inflated accounts

receivable and inventory values to First Union on a daily basis.

12. Defendants BARRY M. BUDILOV and RAYMOND J. GREEN caused Ambassador to use the following fraudulent methods, among others, to inflate Ambassador's reported accounts receivable:

- (a) Ambassador failed to properly reduce accounts receivable after issuing customer credits for the return of products;
- (b) Ambassador failed to properly reduce accounts receivable after receiving customer payments;
- (c) Ambassador created false and fictitious invoices to inflate sales;
- (d) Ambassador failed to write off old and uncollectible accounts receivable;
and
- (e) Ambassador improperly included the value of sample eyeglass frames used by sales people as accounts receivable.

13. By failing to reduce accounts receivable after issuing customer credits, defendants BARRY M. BUDILOV and RAYMOND J. GREEN deliberately overstated sales in violation of GAAP.

14. Defendant BARRY M. BUDILOV caused and directed defendant RAYMOND J. GREEN to falsely inflate Ambassador's inventory by, among other methods, adjusting the cost basis of the inventory upward and by failing to write off obsolete inventory.

15. By falsely inflating Ambassador's inventory, defendants BARRY M. BUDILOV and RAYMOND J. GREEN deliberately increased Ambassador's assets and overstated Ambassador's income and retained earnings in violation of GAAP.

16. Defendants BARRY M. BUDILOV and RAYMOND J. GREEN instructed an account clerk not to reduce accounts receivable after receiving payments from customers, including Wal-Mart.

17. Defendants BARRY M. BUDILOV and RAYMOND J. GREEN instructed an account manager for the Wal-Mart account to prepare false and fictitious invoices for Wal-Mart, knowing that none of the products listed on the invoices were shipped.

18. Defendants BARRY M. BUDILOV and RAYMOND J. GREEN instructed employees not to enter customer credits on the company's records for the return of products, thus making it appear that money was still owed to Ambassador.

19. On or about March 31, 1998, defendant BARRY M. BUDILOV caused the accounting staff to book a receivable for approximately \$245,000 for products shipped that were never ordered.

20. On or about June 30, 1998, defendant BARRY M. BUDILOV directed defendant RAYMOND J. GREEN to arbitrarily reduce accounts payable by over \$100,000.

21. Defendants BARRY M. BUDILOV and RAYMOND J. GREEN provided First Union with Ambassador's SEC public filings which contained materially false statements and representations as to the company's assets and net worth.

22. Defendants BARRY M. BUDILOV and RAYMOND J. GREEN caused Ambassador's SEC public filings to materially misstate Ambassador's financial condition in order to make it appear profitable when it was not.

23. In order to avoid detection, defendants BARRY M. BUDILOV and RAYMOND J. GREEN deliberately provided false and misleading books and records to First

Union's auditors, including falsified accounts receivable aging records and falsified inventory records.

24. In order to avoid detection, defendant BARRY M. BUDILOV instructed defendant RAYMOND J. GREEN to provide false and misleading schedules to the public accounting firm hired by First Union to conduct a forensic audit.

25. Defendant BARRY M. BUDILOV instructed defendant RAYMOND J. GREEN to delete from GREEN'S computer certain falsified records.

26. Defendants BARRY M. BUDILOV and RAYMOND J. GREEN caused First Union to suffer a loss of approximately \$14,167,570 through false and fraudulent representations to the bank.

All in violation of Title 18, United States Code, Sections 1344 and 2.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through eight and ten through twenty-six of Count One of the indictment are incorporated here.

2. On or about April 3, 1998, in the Eastern District of Pennsylvania and elsewhere, defendant

BARRY M. BUDILOV

knowingly made, and aided and abetted the making of, a materially false statement to First Union National Bank, and willfully overvalued security, and aided and abetted the overvaluation of security, for the purpose of influencing the actions of First Union in relation to a loan and line of credit, in that BUDILOV submitted and caused to be submitted to First Union a false borrower's certificate, in which BUDILOV represented that Ambassador's new sales for April 3, 1998, were \$1,639,978 and the current total eligible accounts receivable for April 3, 1998, were \$17,270,890, when the defendant knew that the new sales and current total eligible accounts receivable were materially overstated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through eight and ten through twenty-six of Count One of the indictment are incorporated here.

2. On or about April 7, 1998, in the Eastern District of Pennsylvania, defendant

BARRY M. BUDILOV

knowingly made, and aided and abetted the making of, a materially false statement to First Union National Bank in relation to a loan and line of credit, and willfully overvalued security, and aided and abetted the overvaluation of security, for the purpose of influencing the actions of First Union in relation to a loan and line of credit, in that BUDILOV submitted and caused to be submitted to First Union a false borrower's certificate, in which BUDILOV represented that Ambassador's carry-forward previous accounts receivable balance for April 7, 1998, were \$17,222,894 and the current total eligible accounts receivable for April 7, 1998, were \$17,109,569, when the defendant knew that the previous accounts receivable balance and current total eligible accounts receivable were materially overstated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through eight and ten through twenty-six of Count One of the indictment are incorporated here.

2. On or about April 8, 1998, in the Eastern District of Pennsylvania, defendant

BARRY M. BUDILOV

knowingly made, and aided and abetted the making of, a materially false statement to First Union National Bank in relation to a loan and line of credit, and willfully overvalued security, and aided and abetted the overvaluation of security, for the purpose of influencing the actions of First Union in relation to a loan and line of credit, in that BUDILOV submitted and caused to be submitted to First Union a false borrower's certificate, in which BUDILOV represented that Ambassador's carry-forward previous accounts receivable balance for April 8, 1998, were \$17,109,569 and the current total eligible accounts receivable for April 8, 1998, were \$17,056,836, when the defendant knew that the previous accounts receivable balance and current total eligible accounts receivable were materially overstated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through eight and ten through twenty-six of Count One of the indictment are incorporated here.

2. On or about April 9, 1998, in the Eastern District of Pennsylvania, defendant

BARRY M. BUDILOV

knowingly made, and aided and abetted the making of, a materially false statement to First Union National Bank in relation to a loan and line of credit, and willfully overvalued security, and aided and abetted the overvaluation of security, for the purpose of influencing the actions of First Union in relation to a loan and line of credit, in that BUDILOV submitted and caused to be submitted to First Union a false borrower's certificate, in which BUDILOV represented that Ambassador's carry-forward previous accounts receivable balance for April 9, 1998, were \$17,056,836 and the current total eligible accounts receivable for April 9, 1998, were \$17,105,484, when the defendant knew that the previous accounts receivable and current total eligible accounts receivable were materially overstated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through eight and ten through twenty-six of Count One of the indictment are incorporated here.

2. On or about April 10, 1998, in the Eastern District of Pennsylvania, defendant

BARRY M. BUDILOV

knowingly made, and aided and abetted the making of, a materially false statement to First Union National Bank in relation to a loan and line of credit, and willfully overvalued security, and aided and abetted the overvaluation of security, for the purpose of influencing the actions of First Union in relation to a loan and line of credit, in that BUDILOV submitted and caused to be submitted to First Union a false borrower's certificate, in which BUDILOV represented that Ambassador's carry-forward previous accounts receivable balance for April 10, 1998, were \$17,105,484 and the current total eligible accounts receivable for April 10, 1998, were \$16,941,690, when the defendant knew that the previous accounts receivable balance and current total eligible accounts receivable were materially overstated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through eight and ten through twenty-six of Count One of the indictment are incorporated here.
2. On or about April 13, 1998, in the Eastern District of Pennsylvania, defendant

BARRY M. BUDILOV

knowingly made, and aided and abetted the making of, a materially false statement to First Union National Bank in relation to a loan and line of credit, and willfully overvalued security, and aided and abetted the overvaluation of security, for the purpose of influencing the actions of First Union in relation to a loan and line of credit, in that BUDILOV submitted and caused to be submitted to First Union a false borrower's certificate, in which BUDILOV represented that Ambassador's carry-forward previous accounts receivable balance for April 13, 1998, were \$16,941,690 and the current total eligible accounts receivable for April 13, 1998, were \$16,726,629, when the defendant knew that the previous accounts receivable balance and current total eligible accounts receivable were materially overstated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through eight of Count One of the indictment are incorporated here.

At all times material to this indictment:

2. As a publicly traded company, Ambassador was required to comply with the Securities Act of 1933, the Securities Exchange Act of 1934 and the regulations of the United States Securities and Exchange Commission (the “SEC”). These laws and regulations were designed to protect the investing public by ensuring that publicly traded companies, like Ambassador, fairly, accurately and timely report their financial results and conditions. To ensure fair, accurate and timely reports to the investing public, the securities laws and the SEC regulations required Ambassador and its directors and officers to, among other things:

- (a) make and keep books, records and accounts which in reasonable detail accurately and fairly reflect Ambassador’s transactions and disposition of assets;
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company’s transactions were executed in accordance with management’s policies and recorded as necessary to permit preparation of reliable financial statements in accordance with applicable accounting norms;
- (c) file regular public reports including quarterly reports (Form 10Q), current reports (Form 8K) and annual reports (Form 10K) with the SEC; and
- (d) make fair and accurate representations to auditors preparing public reports of

Ambassador, including all material facts necessary to make management's representations to auditors not misleading.

3. From in or about March 1998 through in or about November 1998, Ambassador filed regular public reports with the SEC.

4. From in or about March 1998 up to and including in or about December 1998, in the Eastern District of Pennsylvania and elsewhere, defendant

BARRY M. BUDILOV,

in connection with the purchase and sale of securities, willfully and knowingly, by the use of the means and instrumentalities of interstate commerce and of the facilities of a national securities exchange, directly and indirectly used and employed manipulative and deceptive devices and contrivances, by:

- (a) employing devices, schemes, and artifices to defraud;
- (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon a person, in connection with the purchase and sale of Ambassador Eyewear Group, Inc. securities.

5. Defendant BARRY M. BUDILOV violated these provisions referred to in paragraph two above by making materially false and misleading statements about Ambassador's financial condition as set forth in Counts Nine and Ten, including, among other things, causing Ambassador's public filings with the SEC to materially misstate Ambassador's financial condition

in order to make it appear profitable when it was not, and to materially overstate the rate of return on investments in Ambassador and the net worth of Ambassador.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), 17 C.F.R. § 240.10b-5, and Title 18, United States Code, Section 2.

COUNT NINE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs one through eight of Count One of the indictment are incorporated here.
2. Paragraphs two, three and five of Count Eight of the indictment are incorporated here.
3. On or about August 14, 1998, in the Eastern District of Pennsylvania and elsewhere, defendants

BARRY M. BUDILOV
and
RAYMOND J. GREEN

willfully and knowingly caused, and aided and abetted, the filing by Ambassador of an SEC Form 10-QSB, which contained statements of material fact that were false and misleading and that failed to contain material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading, in that Ambassador reported, among other things, that its net profit for the three-month period ending June 30, 1998, was approximately \$651,000, its current assets were approximately \$24,871,000, and its retained earnings were \$1,768,000, when the defendants knew that Ambassador's net income, current assets and retained earnings for the period were materially misrepresented and were materially less than reported.

In violation of Title 15, United States Code, Sections 78m(a), 78ff(a) and 17 C.F.R., Sections 126-20, 240.12b-20, 240.13a-13, and Title 18, United States Code, Section 2.

COUNT TEN

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs one through eight of Count One of the indictment are incorporated here.

2. Paragraphs two, three and five of Count Eight of the indictment are incorporated here.

3. On or about November 16, 1998, in the Eastern District of Pennsylvania and elsewhere, defendant

BARRY M. BUDILOV

willfully and knowingly caused, and aided and abetted, the filing by Ambassador of an SEC Form 10-QSB, which contained statements of material fact that were false and misleading and that failed to contain material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading, in that Ambassador reported, among other things, that its net profit for the six-month period ending September 30, 1998, was approximately \$465,000, its current assets were approximately \$27,531,000, and its retained earnings were \$2,230,000, when the defendant knew that Ambassador's net income, current assets and retained earnings for the period were materially misrepresented and were materially less than reported.

In violation of Title 15, United States Code, Sections 78m(a), 78ff(a) and 17 C.F.R., Sections 240.12b-20, 240.13a-1, and Title 18, United States Code, Section 2.

COUNT ELEVEN

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs one through eight of Count One of the indictment are incorporated here.
2. Paragraphs two, three and five of Count Eight of the indictment are incorporated here.
3. From in or about March 1998 through in or about February 1999, in the Eastern District of Pennsylvania and elsewhere, defendant

BARRY M. BUDILOV

unlawfully, willfully, and knowingly, directly and indirectly, falsified and caused to be falsified books, records, and accounts which, in reasonable detail, would accurately and fairly reflect the transactions and disposition of the assets of Ambassador by, among other things, creating false financial records, financial statements, invoices, accounts receivable, and shipping documentation, and understating accounts payable, and overstating retained earnings and profits.

In violation of Title 15, United States Code, Sections 78m(b)(5), 78ff(a), 17 C.F.R., Section 240.13b2-1, and Title 18, United States Code, Section 2.

NOTICE OF FORFEITURE

As a result of the violation of Title 18, United States Code, Section 1344 set forth in Count One of this indictment, defendant

BARRY M. BUDILOV

shall forfeit to the United States under Title 18, United States Code, Section 982(a)(2)(A):

Any and all real and/or personal property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation of Title 18, United States Code, Section 1344, as charged in this indictment, including but not limited to approximately \$14,167,570 dollars in United States currency.

If any of the property described above is being subject to forfeiture, as a result of any act or admission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A) to seek forfeiture of any other property of the defendant up to the value of said

property listed above as being subject to forfeiture.

All pursuant to Title 18, United States Code, Section 982(a)(2)(A).

A TRUE BILL:

FOREPERSON

PATRICK L. MEEHAN
United States Attorney